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No. 81-2305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PENNZOIL COMPANY,

Petitioner,

v.

DEPARTMENT OF ENERGY, and JAMES B. EDWARDS, Secretary of Energy, and the UNITED STATES OF AMERICA,

Respondents.

On Petition For A Writ Of Certiorari To The Temporary Emergency Court Of Appeals Of The United States

BRIEF *AMICUS CURIAE* OF EXXON CORPORATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF *AMICUS CURIAE* OF EXXON CORPORATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

Exxon Corporation ("Exxon"), with the consent of the parties, submits this brief *amicus curiae* in support of the petition for a writ of certiorari filed by Pennzoil Company ("Pennzoil").

INTEREST OF EXXON CORPORATION

Exxon is the defendant in an enforcement action brought by the United States on behalf of the Department of Energy ("DOE"). *United States* v. *Exxon Corp.*, No. 78-1035 (D.D.C., filed June 8, 1978). In that case, DOE alleges that Exxon violated the petroleum price regulations in its operation of the Hawkins Field Unit in

Wood County, Texas. The Hawkins Field Unit is one of the largest enhanced recovery projects ever undertaken in the United States to extract additional crude oil from a field in its declining phases of primary production. The amount in controversy is uncertain but substantial. The government's amended complaint alleges overcharges of $183,305,020,[1] but DOE has subsequently alleged that the amount in controversy may be much greater than that.[2]

Exxon has a direct interest in the outcome of the instant case because the ultimate legal issue presented in this case—the procedural validity of Ruling 1975-15 issued by the Federal Energy Administration ("FEA")—is also one of the issues presented in Exxon's case. Although resolution of that issue in favor of the agency here would not be determinative of the government's case against Exxon, resolution of that issue against the government would be determinative of Exxon's case in its favor. Exxon was an *amicus curiae* in the court of appeals below.

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[1] Amended Complaint at 16 (Sept. 18, 1978).

[2] In March, 1981, the DOE stated to the Temporary Emergency Court of Appeals that Exxon's potential alleged overcharge liability in the Hawkins Field case "now exceed[s] $500 million." Brief of the United States of America at 6 n.7 (Mar. 18, 1981), filed in *Exxon Corp.* v. *United States*, No. DC-85 (TECA). More recently, a senior DOE official told the press that the case was the DOE's "biggest dollar-value case" and involved "$800 million." The Houston Post, June 9, 1982, at 7E (remarks of Rayburn Hanzlik, Administrator, Economic Regulatory Administration).

STATEMENT

1. The concept of "property" was the cornerstone for federal price controls on crude oil from 1973 to 1981.[3] The regulatory character of crude oil, including the price at which it could lawfully be sold, was determined by reference to the "property" from which the crude oil was produced.[4] Because of the enormous disparity between controlled prices and "upper tier" or free market prices, disputes about the definition of "property," even as applied to a single producing field, could involve hundreds of millions of dollars.[5]

One of the most crucial issues involving the definition of "property" concerns its application to producing fields that were unitized after 1972, the regulatory base period. Unitization is the legal process whereby operating rights in a tract or area are combined to permit joint operation of the unitized area.[6] In some instances, an entire producing field is unitized for the purpose of increasing the amount of recoverable crude oil reserves. Such units are commonly called enhanced recovery units. The agency did not define "property," however, to include enhanced recovery units. "Property" was defined, with deceptive simplicity, as "the right which arises from a lease or from a fee interest to produce domestic crude petroleum." 6 C.F.R. § 150.354(b), 38 Fed. Reg. 22536, 22538 (Aug. 22, 1973).

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[3] The price control program administered by the DOE and its predecessors began with Phase IV regulations of the Cost of Living Council, 38 Fed. Reg. 22536 (Aug. 22, 1973), and was terminated by President Reagan with Executive Order No. 12287, 46 Fed. Reg. 9909 (Jan. 30, 1981).

[4] *See generally* 10 C.F.R. § 212.54 and § 212.71 *et seq.* (1981).

[5] *See* notes 1-2 *supra* and accompanying text.

[6] *See generally* 6 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW § 901 *et seq.* (1981).

This naturally gave rise to the view that when interest holders under separate leases entered into a unitization agreement, each lease remained a separate property within the contemplation of the regulations.

This view, moreover, appeared particularly compelling with regard to units that were formed after 1972 from lease or fee interests that existed separately during the 1972 base period. The regulatory character of crude oil was determined by comparing the current production of a property with its base production control level ("BPCL"), which generally was the amount of crude oil produced and sold from that property in 1972. *See id.* The need to compare a property's current production with its 1972 production strongly suggested that a post-1972 unitization would not work a change in the basic character of the property, *i.e.*, that a unit formed after 1972 would not constitute a new property but instead would encompass the several properties corresponding to its constituent lease and fee interests as they existed during the 1972 base period. Pennzoil followed this natural construction of the regulations in its determination of lawful prices for crude oil produced from the Walker Creek Field Unit in Arkansas, which was unitized in 1974. Pet. 5-7.

On August 29, 1975, however, without notice or opportunity for public comment, FEA departed from the natural construction of the "property" definition by issuing Ruling 1975-15, 40 Fed. Reg. 40832 (Sept. 4, 1975). Ruling 1975-15 took the position, with regard to post-1972 unitizations, that the unit, not its leases, should be treated as the relevant "property" for the purpose of measuring current production, and that a new BPCL should be constructed for the unit, by aggregating the separate BPCL's of its leases, as if the unit had been in existence in 1972. FEA later amended and partially res-

cinded *ab initio* Ruling 1975-15 to provide that a post-1972 enhanced recovery unit becomes a property only when enhanced recovery operations lead to a "significant alteration of producing patterns." 41 Fed. Reg. 4931, 4937 (Feb. 3, 1976).[7] But Ruling 1975-15, even as amended, was seriously adverse to Pennzoil, for it purported to subject to lower tier price treatment very substantial quantities of crude oil that otherwise would have qualified for higher prices or would have been exempt from price controls altogether. *Compare* 10 C.F.R. § 212.73, 39 Fed. Reg. 1924, 1952 (Jan. 15, 1974), *with* 10 C.F.R. § 212.74, 39 Fed. Reg. 1924, 1952 (Jan. 15, 1974).

2. Pennzoil instituted this action requesting that Ruling 1975-15 be declared invalid because it was adopted in violation of the rulemaking requirements of the Administrative Procedure Act ("APA")[8] and the Federal Energy Administration Act of 1974 ("FEA Act").[9] The parties took substantial discovery directed to the question whether Ruling 1975-15 was intepretative in character, so as to bring it within the scope of the APA's exemption for "interpretative rules,"[10] or whether it was a legislative rule that reflected a substantive policy choice made

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[7] The agency did not define "significant alteration in producing patterns" until August, 1976, 10 C.F.R. § 212.75(b), 41 Fed. Reg. 36172, 36184 (Aug. 26, 1976), and it continued to "explain" and "clarify" its regulatory "interpretations" for some time thereafter. *See* Ruling 1977-1, 42 Fed. Reg. 3628 (Jan. 19, 1977); Ruling 1977-2, 42 Fed. Reg. 4409 (Jan. 25, 1977).

[8] 5 U.S.C. § 553(b) & (c). FEA was subject to the rulemaking requirements of the APA at the time it published Ruling 1975-15. *See* Federal Energy Administration Act, § 7(i)(1)(A), 15 U.S.C. § 766(i)(1)(A).

[9] FEA Act § 7(c) & (i), 15 U.S.C. § 766(c) & (i).

[10] APA § 4(a), 5 U.S.C. § 553(b)(A).

by the agency without the benefit of a notice-and-comment rulemaking. Pennzoil then requested a trial, but the government moved for summary judgment. Pet. 10. DOE argued that the validity of Ruling 1975-15 already had been sustained in *Grigsby* v. *DOE*, 585 F.2d 1069 (TECA 1978), *cert. denied*, 440 U.S. 908 (1979), and that, as a factual matter, the Ruling was a reasonable and historically correct interpretation of the regulation. With regard to the second point, DOE asserted that "Ruling 1975-15 merely reiterates an interpretation which the FEA had already followed consistently over a long period of time . . . ."[11] DOE rested this factual assertion upon five interpretations issued by FEA's General Counsel to private parties between December 2, 1974, and June 30, 1975.[12]

Pennzoil responded in two ways to the agency's contention that Ruling 1975-15 was a valid and historically correct interpretation. First, Pennzoil pointed out that none of the five interpretations relied upon by DOE had been published in the Federal Register or indexed and made publicly available, as required by the APA, until May 1977—almost two years after the publication of Ruling 1975-15.[13] Because Pennzoil did not have "actual and

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[11] Brief in Support of Defendants' Motion for Summary Judgment, *Pennzoil Co.* v. *DOE*, No. 78-335 (D. Del.), at 53 (Jan. 23, 1981), II R. 272. Citations are to the volume and page number of the nine volume stipulated record filed in the court of appeals.

[12] *See* II R. 272-74 *citing* FEA Interpretation 1974-22, 42 Fed. Reg. 25659 (May 18, 1977); FEA Interpretation 1975-2, 42 Fed. Reg. 23723 (May 10, 1977); FEA Interpretation 1975-4, 42 Fed. Reg. 23726 (May 10, 1977); FEA Interpretation 1975-10, 42 Fed. Reg. 23730 (May 10, 1977); and FEA Interpretation 1975-27, 42 Fed. Reg. 23740 (May 10, 1977).

[13] The APA requires an agency to publish in the Federal Register "statements of general policy or interpretations of general applicability formulated and adopted by the agency . . . ." 5

timely notice" of those interpretations, the agency was statutorily proscribed from citing them as precedent or otherwise using them against Pennzoil.[14] Pennzoil also pointed out that only one of those five interpretations applied to a post-1972 multiple-lease, enhanced recovery unit, such as the Walker Creek Field Unit, and that interpretation simply held that such a unit was not a new property with a zero BPCL.

Second, Pennzoil produced a substantial record of documentary and testimonial evidence—including 151 contemporaneous documents,[15] four sworn affidavits of former key agency officials,[16] and eight sworn affidavits

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U.S.C.§ 552(a)(1)(D). It further requires an agency to "make available for public inspection and copying . . . those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register . . . ." *Id.* § 552(a)(2)(B).

[14] With respect to "interpretations of general applicability," the APA was amended in 1967 to provide that, "[e]xcept to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published." 5 U.S.C.§ 552(a)(1). Similarly, other agency statements of policy or interpretations "that affect[] a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—(i) it has been indexed and either made available or published as provided by this paragraph; or (ii) the party has actual and timely notice of the terms thereof." *Id.* § 552(a)(2). *See generally Morton* v. *Ruiz*, 415 U.S. 199, 232-36 (1974).

[15] Volumes VI, VII and VIII of the Record contain those documents.

[16] V R. 1324 *et seq.*, 1389 *et seq.*, 1442 *et seq.* & 1549 *et seq.* The DOE moved to strike these affidavits, even though it had offered and relied upon the affidavits and testimony of two of these same witnesses in other cases to explain the intent and administrative history of its regulations. The district court never granted that motion.

of industry officials and their counsel who had contemporaneous communications with the agency concerning the regulatory issues in question [17]—which contradicted the factual basis for DOE's summary judgment motion. This evidence showed that prior to the issuance of Ruling 1975-15 the agency, both in internal deliberations and in communications with members of the industry, had construed the term "property" to refer to the separate lease or fee interests included in post-1972 units and not to the units themselves—a position diametrically opposed to the position espoused in Ruling 1975-15.

Pennzoil submitted that this evidence precluded summary judgment in favor of the government on the questions of the validity and historical correctness of Ruling 1975-15: if Pennzoil's view of the evidence was correct, then Ruling 1975-15 represented a dramatic change, not a codification, of the agency's long-standing regulatory position, from which it would follow that Ruling 1975-15 was legislative, not interpretative, in character, and therefore was invalid due to the agency's failure to provide notice and opportunity for public comment as required by the APA and the FEA Act. [18]

The district court did not address the question of the reasonableness and historical correctness of Ruling 1975-15. The court granted summary judgment to DOE solely on the ground that the validity of Ruling 1975-15 had been sustained in *Grigsby*. Accordingly, the district court had

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[17] V R. 1359 *et seq.*, 1362 *et seq.*, 1366 *et seq.*, 1370 *et seq.*, 1416 *et seq.*, 1526 *et seq.*, 1532 *et seq.*, & 1618 *et seq.*

[18] Section 4 of the APA generally requires agencies to publish notice of proposed rules and to provide "interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments . . . ." 5 U.S.C. § 553(b)(3) and (c).

no occasion to evaluate the record submitted by Pennzoil. It did not adjudicate or find any facts concerning any of the contested factual issues in the case. And it did not express an opinion, even in *dictum*, as to what its evidentiary analysis and conclusions would have been, had it believed that it was entitled to address those issues.

3. On Pennzoil's appeal from the entry of summary judgment, the Temporary Emergency Court of Appeals ("TECA") essentially undertook to sit as a three-judge trial court and to adjudicate disputed and previously unaddressed factual issues. Unlike the district court, TECA did not view the case as one simply controlled by prior precedent. Instead, TECA plunged into the voluminous record and did so without the benefit of any decision by the district court on the numerous factual issues presented by that record. TECA sifted, analyzed and weighed the probative value of evidence in the record, as well as the unsupported statements of DOE counsel in their briefs, to which TECA uncritically attributed evidentiary significance. [19] On the basis of its own findings of fact, TECA concluded that Ruling 1975-15 was "sustainable as a reasonable interpretation." Pet. App. 48a.

SUMMARY OF ARGUMENT

The court of appeals in this case, by adjudicating factual issues not addressed by the district court and by resolving those issues against the party opposing summary judgment, proceeded in a manner proscribed by decisions of this Court. *See, e.g., Kennedy* v. *Silas Mason*

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[19] This Court has previously cautioned that "[t]he courts may not accept . . . counsel's post hoc rationalizations for agency action . . . ." *Burlington Truck-Lines, Inc.* v. *United States*, 371 U.S. 156, 168 (1962).

Co., 334 U.S. 249, 256 (1948); *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962). In thus deciding the case, the court "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." Rule 17.1(a) of the Rules of this Court.

The underlying issue in this case is one of immense economic significance to crude oil producers. The government's own allegations indicate that the effect upon the industry may exceed one billion dollars.

ARGUMENT

1. In this case, TECA turned the traditional relationship between trial and appellate courts on its head. TECA ignored the fundamental distinction that exists in the federal judicial system between trial courts—whose essential role is to evaluate evidence and make findings of fact—and courts of appeals—whose role is to decide questions of law. *See Pullman-Standard* v. *Swint*, 50 U.S.L.W. 4425, 4429 (U.S. April 27, 1982). TECA usurped the function of the district court here by adjudicating factual issues that the district court did not address, and it did so by resolving against one party vigorously disputed issues of material fact in the context of the other party's motion for summary judgment.

It would have been reversible error for the district court to have done what TECA did in this case. *United States* v. *Diebold, Inc.*, 369 U.S. 654, 655 (1962) ("On summary judgment the inferences to be drawn from the underlying facts contained in [the record] must be viewed in the light most favorable to the party opposing the motion"). *Accord, Adickes* v. *S.H. Kress Co.*, 398 U.S. 144, 157 (1970); *Poller* v. *Columbia Broadcasting System*, 368 U.S. 464, 473 (1962). For an appellate court to resolve disputed issues of material fact in favor of the

moving party, in a case arising on summary judgment, represents a fundamental departure from the accepted norm laid down by this Court for the hearing of appeals. *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 256 (1948) ("The hearing of contentions as to disputed facts, the sorting of documents to select relevant provisions, ascertain their ultimate form and meaning in the case, the practical construction put on them by the parties and reduction of the mass of conflicting contentions as to fact and inference from facts, is a task primarily for a court of one judge, not for a court of nine"). As this Court recently affirmed, a court of appeals' "own review of the evidence" is reversible error because "[d]etermining the weight and credibility of the evidence is the special province of the trier of fact." *Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 50 U.S.L.W. 4592, 4596 (U.S. June 1, 1982).[20]

This case provides a dramatic example of why a court of appeals must not stray outside its legitimate domain. Pennzoil, in opposing the government's motion for summary judgment, was entitled to have the record "viewed in the light most favorable to [it] . . . ." *Adickes* v. *S.H. Kress Co.*, 398 U.S. at 157. That record, in fact, was overwhelmingly favorable to Pennzoil and adverse to DOE. The record showed, for example, that when the Cost of Living Council ("CLC") first promulgated the regulatory definition of "property," it intentionally adopted an "individual lease or property" approach,[21]

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[20] *See also Pullman-Standard* v. *Swint*, 50 U.S.L.W. 4425,4430 (U.S. April 27, 1982) ("the [appellate] court's independent consideration of the totality of the circumstances it found in the record," rather than a remand to the district court for appropriate fact findings, was reversible error).

[21] VI R. 1637.

with the explicit understanding, as stated by CLC's own Energy Policy Committee, that "[a] lease-by-lease approach in a unitized field should operate in the same manner as in other cases . . . ."[22] Officials within CLC understood that leases that produced crude oil in 1972 "should continue to be treated as separate properties although they were included in a unit formed after 1972."[23] In the words of William N. Walker, CLC's General Counsel and Deputy Director, "[i]t was not the purpose and intent of the CLC's regulations to *require* that an enhanced recovery or secondary recovery unit formed after 1972 be treated as a single property."[24] CLC evidently had these considerations in mind when it promulgated the parallel regulatory definition of "property" implementing the statutory exemption for so-called "stripper" (low production) wells:

> *Property is the right which arises from a lease in existence in 1972* or from a fee interest to produce domestic crude petroleum in existence in 1972 *and is co-extensive with that property used* in § 150.354(b) [predecessor of 10 C.F.R. § 212.72] *for purposes of determining "base production control level."*

6 C.F.R. § 150.54(s)(2), 38 Fed. Reg. 32495 (Nov. 26, 1973) (emphasis added).

The record further shows that, with this history in mind, lawyers in the Office of the General Counsel of CLC's successors, the Federal Energy Office ("FEO") and FEA, contemporaneously believed that "each of the leases within a unit could constitute a separate 'property' if the producing interest existed in that manner during

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[22] VI R. 1638.

[23] V R. 1434.

[24] V R. 1564 (emphasis in original).

1972."[25] The Internal Revenue Service, which at the time was charged with the duty of audit and enforcement, advised that "the calculation of new crude petroleum production would be determined on a lease-by-lease basis in a unitized field."[26] Responsible agency officials made similar representations to crude oil producers throughout 1974. For example, the head of FEO's Office of Price Exception advised Austral Oil Company that "it would not be a violation of the regulations to construe that term ["property"] to mean each individual lease in a unit."[27]

This view of the definition of "property," moreover, was adopted and applied by FEA in formal administrative adjudications as late as four days *after* the agency's issuance of Ruling 1975-15, which announced a diametrically opposite view. In *Empire Drilling Co.*, 2 FEA ¶ 83,142, *aff'd*, 2 FEA ¶ 80,676 (1975), a producer had requested permission to use a unit-wide BPCL for a post-1972 unit, *i.e.*, to do precisely what Ruling 1975-15 declared to have been required all along. *FEA denied the request! See also Sun Oil Co.*, 2 FEA ¶ 83,075 (1975) (denying a similar request).

The record thus demonstrates that Ruling 1975-15 was in no sense a mere codification of pre-existing regulatory requirements. In issuing that Ruling, FEA was breaking new ground and imposing new and different requirements, albeit without the benefit of the educational proc-

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[25] VII R. 2131. *See also* VII R. 2045.

[26] VII R. 2021. *See also* VII R. 2019; V R. 1370-71; VII R. 2023; V R. 1527.

[27] V R. 1392-93; V R. 1368. *See also* V R. 1417-18 & 1619; VII R. 1999, 2007, 2016-17, 2018, 2046, 2047-48, 2123, 2144, 2147, 2156, 2150 & 2151; VIII R. 2234 (public communications and internal documents in 1973-74).

ess that a notice-and-comment rulemaking would have provided. The agency itself recognized the true nature of Ruling 1975-15 when it first proposed reconsideration of the Ruling, 41 Fed. Reg. 1564, 1569 (Jan. 8, 1976), and then, after receiving public input, amended the Ruling *ab initio*, stating,

> until such time as there has been a significant change in producing patterns, *there is no reason for the unit operator to depart from the historical practice of determining quantities of new crude oil on a lease-by-lease basis.*

41 Fed. Reg. 4931, 4937 (Feb. 3, 1976). Because the concept of "significant change in producing patterns" by no stretch of the imagination had been included within the original regulatory definition of "property," it is clear that FEA was engaged in substantive amendment, not mere interpretation. And as a substantive amendment to the regulations, Ruling 1975-15 plainly was procedurally invalid due to the agency's failure to provide notice and opportunity for public comment.

The fundamental injustice of the decision in this case is illustrated by contrasting TECA's conclusion about the clarity of the "property" regulation with the agency's own pre-litigation statements to a congressional oversight committee. According to two of the three judges on the TECA panel, "the property concept" that was said to be "[i]nherent in that regulation" furnished "a meaningful guide for applying the definition to [Pennzoil's] unit in question . . . ." Pet. App. 26a. The TECA majority further stated that,

> [f]ar from there being institutional uncertainty and conflict, there existed in official rulings[28] almost a

[28] This refers to the five unpublished FEA interpretations, none of which was on point and none of which could lawfully be cited or used

> bright line of agency explanation, tentative only on collateral issues but relatively clear and steadfast upon the particular principle in this case.

Pet. App. 36a. In contrast with these statements stands the agency's congressional testimony in November 1976 concerning the very same regulations:

> the ["property"] definition . . . was a very short definition and it was not articulated or explained in greater detail except to have explained that it was the basic building block for the incentive system . . . .[29]
>
> [T]here was a substantial difficulty in applying [the "property" definition] to thousands and thousands of very unique situations. *It was not clear [until September 1, 1976] exactly what the regulation meant; it was not even clear to the regulatory agency itself.*[30]

TECA's conclusion that the agency's non-public explications of its "property" regulation were "clear and steadfast," even though the agency had represented otherwise to Congress, endorses the agency's litigation position to a greater degree than the agency had argued it. Such an anomaly demonstrates the wisdom of Mr.

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against a person such as Pennzoil who did not have "actual and timely notice" of such unpublished materials. *See* notes 12-14 *supra* and accompanying text.

[29] *Hearing on Crude Oil Pricing Compliance Problems Before the Subcomm. on Energy & Power of the House Comm. on Interstate & Foreign Commerce*, 94th Cong., 2d Sess. at 102 (Nov. 11, 1976) (remarks of David G. Wilson, Deputy General Counsel, Federal Energy Administration.)

[30] *Id.* at 103 (remarks of John A. Hill, Deputy Administrator, Federal Energy Administration) (emphasis added).

Justice Jackson's advice to appellate courts that are confronted with complex records such as the one in this case:

> While we might be able, on the present record, to reach a conclusion that would decide the case, it might well be found later to be lacking in the thoroughness that should precede judgment of this importance and which it is the purpose of the judicial process to provide.[31]

2. The question of the validity of Ruling 1975-15 ultimately at issue in this case is one of immense economic significance to crude oil producers. The construction of the regulatory concept of "property" is extremely important to the outcome of numerous pending cases,[32] and the potential impact of the decision below upon the industry may exceed one billion dollars. This Court should grant review to ensure that liability of this magnitude is not heedlessly thrust upon the industry by the decision below.

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[31] *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249, 257 (1948).

[32] In addition to its own case, Exxon is aware of at least three other federal court cases in which "unitized property" issues are critical: *Cotton Petroleum Corp.* v. *DOE*, No. 79-C-217-D (N.D. Okla., filed April 13, 1979); *Christmann & Welborn* v. *DOE*, No. 5-79-007 (N.D. Tex., filed Jan. 31, 1979); *Mobley* v. *DOE*, No. 78-1073 (W.D. La., filed Aug. 17, 1978). There are undoubtedly numerous other "unitized property" cases in administrative litigation or under current investigation by DOE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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